IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Civil Revision No. 96 of 2007.

Date of Decision: 20th July, 2007.

Ram Bhajan Singh ……. **Petitioner.**

Vs.

Sanjay Kuthiala & others. …….. **Respondents.**

Coram

The Hon'ble Mr. Justice Dev Darshan Sud,Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Bhupinder Gupta, Sr. ADvocat,e with Mr. Janesh Gupta, Advocates.

For the Respondents: Mr. Vinay Kuthiala, Advocate.

Dev Darshan Sud, Judge.

This is the tenant's revision against the concurrent findings and judgments of the learned Rent Controller and learned Appellate Authority, accepting the petition for eviction filed by the landlord Smt. Brij Bala Kuthiala wife of Shri Gian Chand under Section 14 of the Himachal Pradesh Urban Rent Control Act, 1987 (hereinafter referred to as the Act) on a number of grounds, namely; (a) arrears of rent (b) unauthorized conversion of the verandah in front of the tenanted premises

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

into a structure for the purpose of use as a kitchen and bath room, causing damage to the building (c), the tenant being guilty of acts which are causing nuisance to the occupies of the building (d), the building is more than 100 years old and is required bonafide by the petitioner-land lady for the purpose of building and rebuilding and making addition and alternations thereto which cannot be carried out without the premises being vacated. The premises are residential and has been converted into a commercial premises where the tenant is running a shop of selling Paneer and Khoya (cheese and casein).

The building is required bonafide by the land lady for her own occupation and the resident o fher yohnger son Sanjay Kuthiala. It was submitted that she is residing with her elder son on the first floor of premises bearing MC No. 36 consisting of two grown up sons aged 22 and 18 years, and a minor daughter aged 11 years. Younger son of the petitioner has a family comprising of his wife, one daughter aged 11 years.

The learned Rent Controller framed ten issues and held that tenant is in arrears of rent, the premises are required bonafide by the petitioner for the purpose of her residence and the residence of her sons considering that there is inadequate accommodation in their possession. The other issues were decided against the petitioner. The learned Rent Controller considered the entire evidence and documents on record holding that necessary ingredients had been pleaded and proved and that eviction petition was not actuated by malafidies nor did the evidence and pleadings show that it was the mere whim, caprice or pleasure of the petitioner which was the motivating factor for filing the petition. Reliance was placed on the decisions of the Hon'ble Supreme Court in

Prem Chand @ Prem Nath versus Shanta Prabhakar 1998 (1) SCC 274, Jagat Pal Dhawan vs. Kahan Singh (dead) (2003) 1 SCC 191, Vijay Singh vs. Vijayalakshmi Ammal 1996 (6) SCC 475, Naresh Kumar and another vs. Surinder Pal (2001) 2 SLC 337 and Om Prakash vs. Ganga Ram and **Hari Prasad and another LHL 2001 HP 161,** while passing the order of eviction against the tenant.

The land lady died during the pendency of the appeal, her legal representative who are respondents have been brought on the record of the case but did not make any difference to the requirement pleaded by her.

The appeal preferred by the tenant before the Appellate Authority was dismissed. Learned Appellate Authority reconsidered the entire evidence, oral as well as documentary on record holding that the judgment of the learned Rent Controller cannot be faulted with on the grounds as pleaded. While considering the evidence, the learned Appellate Authority dealt with each of the points raised by the tenant and concluded that the findings of fact arrived at on record could not be characterized as being based on no evidence or whimsical or fanciful conclusions drawn from established facts.

The tenant has now preferred this revision under Section 24 (5) of the Act.

I have heard learned counsel for the parties and have gone through the record. I am satisfied that the judgment is based on sound legal reasoning by both the courts below and that there is no perversity of conclusions arrived at or the appreciation of evidence. It has been held

more than one case that this court while sitting in revisional jurisdiction, cannot reappreciate the evidence.

It is only when the findings are not legally tenable disclosing the perversity of conclusions on facts ignoring glaring mistakes in the nature of ignoring proved documents and admissions on the record or findings having been based on no evidence at all that this Court will exercise this power in revision. Learned Appellate Authority while dismissing the revision has considered each and every matter in detail. I do not find this a fit case in which I should exercise jurisdiction under Section 24 (5) of the Act to reverse the well reasoned judgments of the two courts below. Having held that the revision is not maintainable, with the consent of the parties, following order is passed:-

(1) The judgment of the learned Appellate Authority will not be executed subject to the following conditions being satisfied:-

(a) The petitioner-tenant will file his individual affidavit(s) as also the affidavit of every adult member of his family that vacant and peaceful possession of the premises will be handed over to the respondents/landlords on or before **31st July, 2008.** This undertaking will also contain an undertaking that the premises will not be sublet, assign, transfer or otherwise deal with the premises in a manner that would render the delivery of the vacant and peaceful possession difficult.

(b) Affidavit(s) will also contain an undertaking that the premises will not be damaged, altered or dealt with in any manner causing danger to the building, structural damages or altered in a manner which changes this structure in any manner whatsoever, or affecting the utility

of the building. In case repairs are required, landlord may be requested to carry them out only as a stop-gap arrangement.

(c) The arrears of rent up to **31st July, 2007** will be paid in lump sum of Rs. 10,000/- No other or further amount will be claimed on arrears of rent for this period. This amount will be paid within two months from today. From **1.8.2007** till **31st July, 2008**, the charges of use and occupation will be fixed at Rs. 600/- per month which will be paid regularly by the tenant on or before 10th of every month.

(d) Affidavit(s) containing the undertaking will be filed in this court within three weeks from today.

(e) It is clarified and understood by the respondents that in case the breach of any of the conditions contained herein, the order shall become executable forthwith. In case the vacant possession of the premises is not handed over by the tenant on or before 31.7.2008, or it is found that he has committed such acts in order to defeat the right of the land lord to recover possession, he or any person associated with him responsible for such acts will be proceeded under the Contempt of Courts Act.

This revision is accordingly disposed of with these directions. There shall no order as to costs. All miscellaneous applications are dismissed.

20th July, 2007. **(Dev Darshan Sud),**
(cm) **Judge.**